

CORPORATION, SECURITIES AND LAND DEVELOPMENT BUREAU

RELEASE NO. 97-4-S

TO: ALL INTERESTED PARTIES

SUBJECT: Impact of Section 18(b)(4)(C) of the National Securities Markets Improvement Act of 1996 upon Section 402(b)(11)(B) of the Michigan Uniform Securities Act

General Background:

Questions have been raised concerning the impact of the National Securities Markets improvement Act of 1996 ("NSMIA") that was signed into law on October 11, 1996. This Release will be limited to the impact of Section 18(b)(4)(C) of NSMIA upon Section 402(b)(11)(B) of the Michigan Uniform Securities Act, 1964 PA 265, as amended (the "Michigan Act").

Section 18(b)(4)(C) provides that "a security is a "covered security" with respect to a transaction that is exempt from registration . . . pursuant to . . . Section 3(a) [of the Securities Act of 1933, as amended][the "33 Act"], other than the offer or sale of a security that is exempt from registration pursuant to Paragraph (4) or (11) of such section, except that a municipal security that is exempt from such registration pursuant to Paragraph (2) of such section is not a covered security with respect to the offer or sale of such security in the State in which the issuer of such security is located."

Section 3(a)(4) of the 33 Act provides an exemption for "any security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder, or individual...."

Section 3(a)(11) of the 33 Act provides an exemption for "any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within, or, if a corporation, incorporated by and doing business within, such State or Territory."

Section 3(a)(2) of the 33 Act provides an exemption for "any security issued or guaranteed by the United States or any territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or Territory, or by any public instrumentality of one or more States or Territories"

Action or Interpretation:

As indicated above, Section 18(b)(4)(C) of NSMIA treats as "covered securities" those securities that are part of a transaction that is exempt from federal registration requirements under Section 3(a) of the 33 Act, with the 3 exceptions noted previously. Michigan will continue to have exclusive registration authority over intrastate offerings exempt under Section 3(a)(11) of the 33 Act and over the state provisions that require the registration or qualification of securities issued by eleemosynary organizations which are exempt from registration under Section 3(a)(4) of the 33 Act.

Also, securities issued by municipalities that are exempt from registration under Section 3(a)(2) of the 33 Act are not covered securities "with respect to the offer and sale of the security in the State in which the issuer of the security is located." Thus, a municipality located in Michigan would have to comply with any registration provision under the laws of Michigan, but would be treated as a "covered security" in all other states in which it is offered or sold. Since securities issued by municipalities located within Michigan are exempt pursuant to Section 402(a)(1) of the Michigan Act, this provision of the 33 Act would have no effect upon the exemption provided by Section 402(a)(1) of the Michigan Act.

Section 3(a)(9) of the 33 Act provides "except with respect to a security exchanged under title 11 of the United States Code [dealing with bankruptcy], any security exchanged by the issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange".

Section 402(b)(11) of MUSA provides an exemption for "any transaction pursuant to an offer to existing security holders of the issuer . . . if either of the following occurs:

- (A) A commission, other than a standby commission, is not paid or given directly or indirectly for soliciting any security holder in this state . . . or the securities are purchased by not more than 25 security holders in this state within a 12-month period.
- (B) Twenty business days before any offer, the issuer files with the administrator the offering circular or other materials proposed to be sent to security holders and other persons describing the terms of the offer together with a filing fee of \$100 and the administrator does not by rule or order disallow the exemption within the next twenty business days.

Therefore, in cases where securities are exchanged (such as where an unregistered security is exchanged for a registered security of the same kind) Michigan is preempted from reviewing the offering.

Section 18(c)(2) of NSMIA permits States to continue to require the filing of "any document" filed with the SEC, together with annual or periodic reports of the value of securities sold or offered to be sold to persons located within the State, solely for notice purposes and for the assessment of any fee, together with a consent to service of process and any required fee. Consequently, the \$100 fee required by Section 402(b)(11)(B) of the Michigan Act, a consent to service of process and notification is still required. However, an offering circular or other materials proposed to be sent to security holders describing the terms of the offer need not be filed.

Authority: National Securities Markets Improvement Act of 1996.

Signed by Craig B. Newell, Acting Director
Corporation, Securities and Land Development Bureau

Dated: April 22, 1997